

July 13, 2012

Ms. Marlene H. Dortch, Secretary Federal Communications Commission Office of the Secretary 445 12<sup>th</sup> Street, SW Washington, DC 20554 Melissa E. Newman Vice President -Federal Regulatory Affairs 1099 New York Ave, NW, Suite 250 Washington, DC 20001 (202) 429-3120

## SUBMISSION FOR THE RECORD

Re: Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC for Consent to Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, WT Docket No. 12-4.

Dear Ms. Dortch:

CenturyLink submits that the Commission must conduct a thorough review of the agency, resale and joint operating agreements (the Commercial Agreements) entered into by the Applicants before it can rule on the Applicants' request for permission to assign the licenses at issue in this proceeding. The Applicants plainly consider these arrangements to be an integrated and essential part of the transaction involving the transfer of spectrum covered by those licenses. Therefore, the public interest standard requires the Commission to evaluate whether the Commercial Agreements contain additional consideration for the exchange of the spectrum and, if so, whether that additional consideration is consistent with the public interest.

The public interest will not be served by the proposed transfer of spectrum licenses if, as seems likely based on public reports, the transaction as a whole will reduce competition and increase barriers to entry in residential communications markets. In this regard, CenturyLink agrees with ITTA, the Independent Telephone & Telecommunications Alliance, which submitted its views in this docket on July 10, 2012. Therefore, the Commission should afford CenturyLink and all affected parties sufficient time and access to the transaction documents to analyze the full extent to which the transaction may affect the public interest, and to propose what, if anything, can be done to ameliorate or offset public interest harms created by the transaction as a whole.

The Applicants propose more than just a transfer of broadband-capable spectrum (which the Commission touted as a source of competitive entry at the time it was auctioned), but also a significant consolidation of the Applicants' wired communications operations through the Commercial Agreements. More importantly, the transaction appears to significantly advance the consolidation of the Applicants' wireless and wired services, reducing the likelihood of intermodal competition and increasing barriers to entry for stand-alone wired (and wireless) providers. It also appears that the transaction may reduce competition in residential markets for broadband and video distribution.

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<sup>&</sup>lt;sup>1</sup> See, e.g., Eliza Krigman, Comcast Executive Defends Spectrum Deal, POLITICO PRO (Mar. 8, 2012); Comments of Consumer Federation of America (CFA), WT Docket No. 12-4 (July 9, 2012).

The Commercial Agreements appear to threaten competition in the delivery of video and other content to consumers over wired networks by creating arrangements that will prevent unaffiliated broadband providers from having the same access to content and competitively critical intellectual property controlled by the Applicants. This dynamic would be particularly harmful to competition in the residential markets where CenturyLink competes to the extent that customers purchasing can access and share content across wired and wireless devices only if they purchase *both* cable broadband and Verizon Wireless service.

It also appears that the Commercial Agreements may facilitate customer sharing of usage allowances, development of proprietary arrangements for Wi-Fi handoffs (particularly in a roaming-like functionality), and joint marketing of products and services. Unaffiliated wireline broadband service providers will be at a significant disadvantage in competing with the combination of Verizon Wireless and the cable companies unless they and their customers have access to the same benefits and functionalities. Moreover, as wireless providers deploy microcell architectures, wireless backhaul will be even more critical than it is today to the viability of residential fiber-based broadband deployments. In this regard, cable companies already have a substantial market share advantage in residential broadband deployments.

Given these considerations, the Commission cannot reasonably conclude its evaluation of the pending transactions until all affected parties have had a meaningful opportunity to analyze the import of the Commercial Agreements in their entirety. The nature and import of those agreements has only gradually come to light, along with awareness of their centrality to what was originally presented as just the transfer of spectrum. Moreover, parties have very limited access to their contents, with even Outside Counsel and Consultants seeing only partially-redacted documents. Based on what has come to light in recent weeks, CenturyLink submits that a thorough review of the Commercial Agreements may reveal that the proposed transfer of licenses cannot be deemed to be in the public interest, at least not without conditioning the transfer on substantial commitments from the Applicants to protect competition in residential broadband and video markets.

Sincerely,

/s

Melissa Newman